

REMARKS

Claims 1, 3-5, 17 and 19-24 are pending and under examination. By this amendment, claims 1, 20-22 and 24 are amended. Withdrawn claims 10-16 and 18 are being maintained of record pending the filing of a divisional application.

Support for “incubating” can be found, *inter alia*, on page 7, line 12. Support for an “effective amount” can be found, *inter alia*, on page 15, line 21 to page 16, line 4, especially page 15, line 21. Applicants maintain that the amendments are fully supported by the disclosure and do not raise an issue of new matter. Entry of this Amendment is respectfully requested.

DOUBLE PATENTING

The provisional obviousness-type double patenting rejection of claim 1 has been maintained. Claim 1 has been rejected as allegedly being unpatentable over claim 35 of copending Application No. 09/664,444, claim 18 of copending Application No. 10/743,639, and claim 17 of copending Application No. 10/743,649, in all three cases in view of Weber et al. and Rummel et al. As previously stated, applicants will consider filing a terminal disclaimer when otherwise allowable subject matter is indicated.

CLAIMS ARE ENABLED

Claims 1, 3-5, 17, 19-22 and 24 have been rejected under 35 U.S.C. §112, first paragraph as allegedly not being enabled. The rejection is respectfully traversed.

The rejection alleged that the “specification does not teach that any concentration of VSV is able to selectively kill any undesirable cell by just a contacting.” (Office Action, page 6) (underlining added). In response, the claims have been amended to recite an “effective

amount” and to recite “incubating” with the virus. It is believed that these amendments overcome the grounds of rejection discussed above.

The rejection also alleged that undue experimentation would be required in order to avoid undesired side effects. The rejection stated:

“Especially for the biological[ly] active drug, such as a cytokine or a virus, it will always produce some unexpected side effects. For example, Interferon gam[m]a-1b, though it is used in the clinic, it produces some adverse effect. If it is not administered at a[n] optimal dosage and a[n] optimal period of time. If a severe side effect occurs, the dosage should be modified or the treatment should be interrupted until the adverse reaction abates.” (Office Action, pages 6-7) (citing PDR Electronic Library entry for ACTIMMUNE® [InterMune] [Interferon gamma-1b]).

The cited reference is concerned with adverse events when interferon gamma-1b is administered to a patient. In contrast, in the instant invention, the cancer cell-containing mixture is treated *ex vivo* with VSV alone or in combination with a chemotherapeutic agent or interferon. The adverse event issues in the *in vivo* context that are discussed in the reference are not applicable in the *ex vivo* context of this invention.

CONCLUSION

In view of the amendments and the preceding remarks, it is believed that the enablement rejection has been overcome. Reconsideration and withdrawal is respectfully requested.

It is believed that no fee, other than the extension of time fee, is required in connection

with the filing of this Amendment. If any additional fee is required, the Commissioner is hereby authorized to charge the amount of such fee to Deposit Account No. 50-1677.

Respectfully submitted,

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